

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RAYMOND CHARLES ROWE  
136 North Broad Street  
Lancaster, PA 17602

vs.

C.A. No: 03-4243

LANCASTER COUNTY, PENNSYLVANIA  
DISTRICT ATTORNEY'S OFFICE  
50 N. Duke Street  
Lancaster, PA 17602

and

DETECTIVE JAN WALTERS  
50 N. Duke Street  
Lancaster, PA 17602

and

JOHN DOE(S) DETECTIVES  
LANCASTER COUNTY  
District Attorney's Office  
50 N. Duke Street  
Lancaster, PA 17602

and

JANE DOE(S) DETECTIVES  
LANCASTER COUNTY  
District Attorney's Office  
50 N. Duke Street  
Lancaster, PA 17602

and

LANCASTER CITY, PENNSYLVANIA  
CITY HALL  
120 N. Duke Street  
Lancaster, PA 17602

and

MAYOR CHARLES SMITHGALL  
City Hall  
120 N. Duke Street  
Lancaster, PA 17602

and

JOHN DOE(S) OFFICIALS  
City Hall  
120 N. Duke Street  
Lancaster, PA 17602

and :  
JANE DOE(S) OFFICIALS :  
City Hall :  
120 N. Duke Street :  
Lancaster, PA 17602 :  
and :  
LANCASTER CITY BUREAU OF POLICE :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
CHIEF OF POLICE WILLIAM M. HEIM :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
CAPTAIN OF DETECTIVES JOHN L. :  
FLEMMING, JR. :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
DETECTIVE SGT. PETER ANDERS :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
DETECTIVE SONJA STEBBENS :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
DETECTIVE KENT SWITZER :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
SGT. ERIC F. STEWART :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
DETECTIVE PETER SAVAGE :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
DETECTIVE JOSEPH McGUIRE :  
50 N. Duke Street :  
Lancaster, PA 17602 :  
and :  
OFFICER KEVIN FORD :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :

and :  
OFFICER K. PATRICK DANZ :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
OFFICER BRADLEY SHENK :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
OFFICER MICHAEL DEAN :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
OFFICER MATTHEW BLAKE :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
OFFICER WILSON :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
JOHN DOE(S) OFFICERS :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
JANE DOE(S) OFFICERS :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
JOHN DOE(S) DETECTIVES :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
JANE DOE(S) DETECTIVES :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
LANCASTER CRIME COMMISSION :  
c/o City Hall :  
120 N. Duke Street :  
Lancaster, PA 17602 :  
and :  
JOHN DOE(S) OFFICERS :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :

JANE DOE(S) OFFICERS :  
39 E. Chestnut Street :  
Lancaster, PA 17602 :  
and :  
JOHN DOE(S) COMMISSION MEMBERS :  
LANCASTER CRIME COMMISSION :  
City Hall, 120 N. Duke Street :  
Lancaster, PA 17602 :  
and :  
JANE DOE(S) COMMISSION MEMBERS :  
LANCASTER CRIME COMMISSION :  
City Hall, 120 N. Duke Street :  
Lancaster, PA 17602 :  
and :  
PENNSYLVANIA BUREAU OF LIQUOR :  
CONTROL ENFORCEMENT :  
PENNSYLVANIA STATE POLICE :  
3655 Vartan Drive :  
Harrisburg, PA 17110 :  
and :  
OFFICER DAVID CHRISTENSEN, AGENT :  
PENNSYLVANIA BUREAU OF LIQUOR :  
CONTROL ENFORCEMENT :  
PENNSYLVANIA STATE POLICE :  
3655 Vartan Drive :  
Harrisburg, PA 17110 :  
and :  
JOHN DOE(S) AGENTS :  
PENNSYLVANIA BUREAU OF LIQUOR :  
CONTROL ENFORCEMENT :  
PENNSYLVANIA STATE POLICE :  
3655 Vartan Drive :  
Harrisburg, PA 17110 :  
and :  
JANE DOE(S) AGENTS :  
PENNSYLVANIA BUREAU OF LIQUOR :  
CONTROL ENFORCEMENT :  
PENNSYLVANIA STATE POLICE :  
3655 Vartan Drive :  
Harrisburg, PA 17110 :  
and :  
JOHN DOE(S) ENFORCEMENT BOARD :  
MEMBERS :  
3655 Vartan Drive :  
Harrisburg, PA 17110 :  
and :

JANE DOE(S) ENFORCEMENT BOARD :  
MEMBERS :  
3655 Vartan Drive :  
Harrisburg, PA 17110 :

### **AMENDED COMPLAINT**

Plaintiff Raymond Charles Rowe, by and through undersigned counsel, Philip J. Berg, Esquire institutes this action to recover for damages as a result of the violation of his constitutional rights, when he was wrongfully arrested and assaulted by the use of unreasonable and unnecessary force by law enforcement in violation of the Civil Rights Act. Further Plaintiff, Raymond Charles Rowe, was denied and/or deprived his due process rights in violation of the Constitution. Plaintiff seeks compensatory and punitive damages as well as attorney fees, interests and costs for this wrongful violation of his rights. The Complaint was timely filed on July 21, 2003 and this Amended Complaint is being filed to correct spelling of certain Defendants names and to correct certain addresses of some Defendants and to eliminate the duplicate names of two (2) Defendants.

#### **I. JURISDICTION**

1. This action is brought pursuant to 42 U.S.C. Sections 1983, 1985 and 1988 and the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. Sections 1331 and 1343 and the aforementioned statutory and Constitutional provisions. Plaintiff further invokes the pendent jurisdiction of this Court to consider claims arising under state law.

2. Plaintiff seeks compensatory damages against each of the named Defendants, jointly and severally, in an amount in excess of One Hundred Fifty Thousand (\$150,000.00) Dollars and a claim for punitive damages, attorney fees and costs against each of the named Defendants, jointly and severally, in an amount in excess of One Hundred Fifty Thousand (\$150,000.00) Dollars.

## **II. THE PARTIES**

3. Plaintiff Raymond Charles Rowe is and was at all relevant times a citizen of the United States of America residing at 136 North Broad Street, Lancaster, Pennsylvania 17601.

4. Defendant Lancaster County, District Attorney's Office is an agency of the County of Lancaster, Pennsylvania and is charged with executing and enforcing the laws of the Commonwealth of Pennsylvania and the United States of America with regard to crime, public safety, etc. with its office located at 50 North Duke Street, Lancaster, Pennsylvania 17602.

5. Defendant Detective Jan Walters was at all relevant times a duly appointed acting official within Lancaster County, District Attorney's Office with offices located at 50 North Duke Street, Lancaster, Pennsylvania 17602.

6. Defendants Detectives (John and Jane Doe) were at all relevant times duly appointed and acting officials within Lancaster County, District Attorney's Office with offices located 50 N. Duke Street, Lancaster, Pennsylvania 17602.

7. Defendant Lancaster City, Pennsylvania is a municipal corporation within the Commonwealth of Pennsylvania that owns, operates, manages, directs, and controls Lancaster City with offices located City Hall, 120 N. Duke Street, Lancaster, Pennsylvania 17602.

8. Defendant Mayor Charles Smithgall was at all relevant times a duly elected and acting official within Lancaster City, Pennsylvania with offices located City Hall, 120 N. Duke Street, Lancaster, Pennsylvania 17602.

9. At all times relevant hereto, Defendants Officials within the governmental agency acted by and through its duly authorized actual and apparent agents, servants, workmen and employees who were acting within the scope of their agency and/or employment and who acted under the color of state law, with offices located City Hall, 120 N. Duke Street, Lancaster, Pennsylvania 17602.

10. Defendant Lancaster City Bureau of Police is an agency of the City of Lancaster within the Commonwealth of Pennsylvania and is charged with executing and enforcing the laws of the Commonwealth of Pennsylvania and the United States of America with regard to crime, public safety, alcohol, etc. with offices located at 39 East Chestnut Street, Lancaster, Pennsylvania 17602.

11. At all times relevant hereto, Defendant, Lancaster City Bureau of Police, acted by and through its duly authorized actual and apparent agents, servants, workmen and/or employees who were acting within the scope of their agency and/or employment and who acted under the color of state law, with offices located 39 East Chestnut Street, Lancaster, Pennsylvania 17602.

12. Defendant Chief of Police William M. Heim was at all relevant times a duly appointed and acting official within Lancaster City Bureau of Police with offices located at 39 East Chestnut Street, Lancaster, Pennsylvania 17602.

13. Defendant Captain of Detectives John L. Flemming, Jr. was at all relevant times a duly appointed and acting official within Lancaster City Bureau of Police with offices located at 39 East Chestnut Street, Lancaster, Pennsylvania 17602.

14. Defendant Detective Sgt. Peter Anders was at all relevant times a duly appointed and acting official within Lancaster City Bureau of Police with offices located at 39 East Chestnut Street, Lancaster, Pennsylvania 17602.

15. Defendant Detective Sonja Stebbens was at all relevant times a duly appointed and acting official within Lancaster City Bureau of Police with offices located at 39 East Chestnut Street, Lancaster, Pennsylvania 17602.

16. Defendant Detective Kent Switzer was at all relevant times a duly appointed and acting official within Lancaster City Bureau of Police with offices located at 39 East Chestnut Street, Lancaster, Pennsylvania 17602.

17. Defendant Sgt. Eric F. Stewart was at all relevant times a duly appointed and acting official within Lancaster City Bureau of Police with offices located at 39 East Chestnut Street, Lancaster, Pennsylvania 17602.

18. Defendant Detective Peter Savage was at all relevant times a duly appointed and acting official within Lancaster City Bureau of Police with offices located at 50 N. Duke Street, Lancaster, Pennsylvania 17602.

19. Defendant Joseph McGuire was at all relevant times a duly appointed and acting official within Lancaster County Detectives with offices located at 50 N. Duke Street, Lancaster, Pennsylvania 17602.

20. Defendant Officer Kevin Ford was at all relevant times a duly appointed and acting official within Lancaster City Bureau of Police with offices located at 39 East Chestnut Street, Lancaster, Pennsylvania 17602.

21. Defendant Officer K. Patrick Danz was at all relevant times a duly appointed and acting official within Lancaster City Bureau of Police with offices located at 39 East Chestnut Street, Lancaster, Pennsylvania 17602.



22. Defendant Officer Bradley Shenk was at all relevant times a duly appointed and acting official within Lancaster City Bureau of Police with offices located at 39 East Chestnut Street, Lancaster, Pennsylvania 17602.

23. Defendant Officer Michael Dean was at all relevant times a duly appointed and acting official within Lancaster City Bureau of Police with offices located at 39 East Chestnut Street, Lancaster, Pennsylvania 17602.

24. Defendant Officer Matthew Blake was at all relevant times a duly appointed and acting official within Lancaster City Bureau of Police with offices located at 39 East Chestnut Street, Lancaster, Pennsylvania 17602.

25. Defendant Officer Wilson was at all relevant times a duly appointed and acting official within Lancaster City Bureau of Police with offices located at 39 East Chestnut Street, Lancaster, Pennsylvania 17602.

26. Defendants John Doe(s) and Jane Doe(s) Officers were at all relevant times duly appointed and acting officials within Lancaster City Bureau of Police with offices located at 39 East Chestnut Street, Lancaster, Pennsylvania 17602.

27. Defendants John Doe(s) and Jane Doe(s) Detectives were at all relevant times duly appointed and acting officials within Lancaster City Bureau of Police with offices located at 39 East Chestnut Street, Lancaster, Pennsylvania 17602.

28. Defendant Lancaster Crime Commission is an agency within the Commonwealth of Pennsylvania that is a criminal investigatory and advisory body located with offices located City Hall, 120 N. Duke Street, Lancaster, Pennsylvania 17602.

29. At all times relevant hereto, Defendant, Lancaster Crime Commission, acted by and through its duly authorized actual and apparent agents, servants, workmen and employees who

were acting within the scope of their agency and/or employment and who acted under the color of state law, with offices located City Hall, 120 N. Duke Street, Lancaster, Pennsylvania 17602.

30. Omitted

31. Defendants John Doe(s) and Jane Doe(s) Officers were at all relevant times duly appointed and acting officials within Lancaster Crime Commission with offices located City Hall, 120 N. Duke Street, Lancaster, Pennsylvania 17602.

32. Defendants John Doe(s) and Jane Doe(s) Commission Members were at all relevant times duly appointed and acting officials within Lancaster Crime Commission with offices located City Hall, 120 N. Duke Street, Lancaster, Pennsylvania 17602.

33. Defendant Pennsylvania Bureau of Liquor Control Board Enforcement is within the exclusive province of the Pennsylvania State Police, which manages and directs policies and procedures as to liquor control with offices located at 3655 Vartan Drive, Harrisburg, Pennsylvania 17110.

34. At all times relevant hereto, Defendant, Pennsylvania Bureau of Liquor Control Board Enforcement, acted by and through its duly authorized actual and apparent agents, servants, workmen and employees who were acting within the scope of their agency and/or employment and who acted under the color of state law, with offices located 3655 Vartan Drive, Harrisburg, Pennsylvania 17110.

35. Defendant Officer David Christensen was at all relevant times duly appointed and acting official within Pennsylvania Bureau of Liquor Board Enforcement with offices located at 3655 Vartan Drive, Harrisburg, Pennsylvania 17110.

36. Defendants John Doe(s) and Jane Doe(s) Agents were at all relevant times duly appointed and acting officials within Pennsylvania Bureau of Liquor Board Enforcement located at 3655 Vartan Drive, Harrisburg, Pennsylvania 17110.

37. Defendants John Doe(s) and Jane Doe(s) Board Members were at all relevant times duly appointed and acting officials within Pennsylvania Bureau of Liquor Board Enforcement located at 3655 Vartan Drive, Harrisburg, Pennsylvania 17110.

38. At all times relevant hereto, all herein named Defendants were acting under color of state law.

### **III. THE FACTS**

39. Plaintiff incorporates the facts averred in paragraphs 1 through 38 the same as if set forth at length herein.

40. On or about July 20, 2001, Plaintiff Raymond Charles Rowe was engaged in employment as a disc jockey at the Chameleon Club, 233 North Water Street, Lancaster, Pennsylvania.

41. The Chameleon Club is a reputable establishment doing business for many years at its location.

42. On or about July 20, 2001, the Chameleon Club held an event that included patrons of majority status as well as those less than twenty-one (21) years of age.

43. In accordance with the notification requirements of including the under twenty-one (21) age group, the Chameleon Club did timely notify the Pennsylvania Liquor Board Enforcement Division of the aforementioned planned event.

44. Upon receipt of said notification, it is incumbent upon the Pennsylvania Liquor Board Enforcement Division to contact the local police, and such notification was made.

45. At midnight on or about July 20, 2001 and extending into the early hours of July 21, 2001, several dozen officers and Pennsylvania Liquor Control Board Enforcement agents entered the club, under the direction of Defendant David Christensen, including but not limited to the named Defendants.

46. The aforementioned raid was an “open inspection,” not in response to any complaints and produced no findings of underage drinking and warranted no arrests of the attendees.

47. The aforementioned may have been part of the Pennsylvania Liquor Control Board Enforcement Division’s “Operation Clean Sweep,” a three-day targeting of possible heightened criminal activity in Lancaster.

48. The officers’ entry and conduct was physically menacing in nature to the club attendees.

49. Officers ordered that the lights be turned up and the music turned down.

50. The request to turn off the music was made to Plaintiff Raymond Charles Rowe, who at the time was wearing headphones and did in fact comply with the request.

51. Plaintiff made an inquiry as to why the music was to cease and received a response from an officer that a raid was being executed.

52. At the direction of the manager of the Chameleon, Plaintiff Rowe resumed playing the music.

53. Defendant Sgt. Eric F. Stewart, Lancaster Police, thereafter demanded the Plaintiff turn the music off.

54. Plaintiff Rowe responded to Defendant Sgt. Stewart that he had resumed playing at the direction of the club manager.

55. Defendant Sgt. Stewart responded with profanity and demanded compliance.

56. Defendant Sgt. Stewart thereafter lunged at Plaintiff Rowe who in turn put his hand up and said he did not want any problems.

57. Defendant Sgt. Stewart intentionally lunged at Plaintiff Rowe a second time, physically grabbed Plaintiff’s shirt, and grabbed him around the neck and throat, pulling Plaintiff out of the disc jockey booth.

58. Defendant Sgt. Stewart was assisted by other officers in the physical extraction of Plaintiff Rowe from the disc jockey booth.

59. At the time of this forced extraction, Plaintiff's daughter had her arms around her father's legs, screaming at the officers to leave her father alone.

60. Plaintiff Rowe was thereafter slammed headfirst into the floor five (5) feet below the booth by the officers and dragged towards the steps.

61. The same officers physically and simultaneously assaulted Plaintiff Rowe holding him by the throat, legs, and side.

62. At no time during the altercation did the Plaintiff Rowe resist or offer any physically menacing motions toward the officers.

63. Plaintiff was thereafter dragged to the entrance of the second floor, down the steps, and outside of the club.

64. Plaintiff during this time, lost consciousness and awakened to an ambulance crew questioning him as to the availability of any seizure medication, having had an episode of seizure prior to regaining consciousness.

65. Plaintiff was thereafter placed in a police vehicle and taken to the police station.

66. Plaintiff was not taken directly to a hospital or any other medical facility for his injuries.

67. After an hour, Plaintiff was charged with resisting arrest and disorderly conduct.

68. As a direct and proximate result of the above described unlawful, malicious, and intentional acts of the Defendants, all committed under the color of authority of the office, governmental agency, and government, Plaintiff Rowe suffered grievous bodily harm, all of which violated his rights under the laws and Constitution of the United States of America, in particular the 4<sup>th</sup>, 5<sup>th</sup>, and 14<sup>th</sup> Amendments thereof and 42 USC s 1983 and 1988.

69. As a further result of the above described acts, Plaintiff Rowe was deprived of the right of due process of the law under the laws and Constitution of the United States of America, in particular the 4<sup>th</sup>, 5<sup>th</sup>, and 14<sup>th</sup> Amendments thereof.

70. Further the assault of Plaintiff Rowe was unwarranted, unjustifiable and excessive in force.

71. As a further result of the above described act, Plaintiff Rowe was deprived of the rights and immunities secured to him under the Constitution and laws of the United States and of the Commonwealth of Pennsylvania, including but not limited to his rights under the 14<sup>th</sup> Amendment to be secure in his person, to be free from punishment and denial of his liberty without due process and to the equal protection of the laws.

72. Defendants intentionally subjected the Plaintiff to these deprivations by acting or by endorsing acts in disregard for the Plaintiff's rights. As a direct result of the acts, Plaintiff

- a. suffered severe injuries, including but not limited to initial injuries of loss of consciousness, seizure, injuries to head, neck, back, trunk, ribs, shoulders, arms [multiple bruises on arms and trunk] ankles and legs,
- b. ongoing injuries including numbness and tingling and pain in elbows, lower arms and fingers; numbness and tingling and pain in legs; stiffness top of spine and neck' and migraine headaches
- c. was forced to endure pain and mental suffering,
- d. was forced to incur medical and legal expenses and loss of earnings and of reputation, and
- e. was deprived of his physical liberty, all to his great detriment and loss.

#### **IV. LEGAL CLAIMS**

73. Plaintiff incorporates the facts averred in paragraphs 1 through 72 the same as if set forth at length herein.

74. Prior to July 2001, Defendant City of Lancaster initially permitted, promoted, tolerated, and ratified a practice of police operations by which “raids” were effectuated without proper supervision, training and control and in violation of the constitutional principles of the United States and of the Commonwealth of Pennsylvania.

75. Prior to July 2001, all Defendants engaged in and executed operations by which “raids” were effectuated without proper supervision, training, and control and in violation of constitutional rights.

76. All Defendants had specific knowledge of the unconstitutional conduct and intentionally acquiesced to the same by failing to establish proper procedures and/or by failing to train the officers executing the same or by failing to impose sanctions upon those in violation.

77. As a result of the aforementioned, the police action of July 20 – 21, 2001 was one of willful and malicious conduct levied against the Plaintiff inclusive of but not limited to assault, infliction of emotional distress, excessive use of force, and unlawful arrest in violation of 42 USC section 1983, 1985 and 1988.

78. At all times herein, Defendants were acting in conspiracy with all other Defendants in violating Plaintiff Rowe’s constitutional rights.

79. The Defendant officers and agents involved in the act of July 20 and July 21, 2001 acted within the course and scope of employment and were acting under the color of state law at which time they intentionally and maliciously acted against the Plaintiff.

80. In so executing the “raid” of July 20 – 21, 2001, Defendants intentionally deprived the Plaintiff of federal cognizable rights and said deprivation occurred under the color of state law.

81. In the aforementioned execution, the Plaintiff was deprived of his rights, privileges and immunities under the laws and Constitution of the United States of America and Commonwealth of Pennsylvania, specifically the right to be secure in his person, to be free from excessive punishment, to due process and to equal protection secured by Article 1, Sections 1, 8, 9, 13, 26 of the Pennsylvania Constitution and by the 5<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments of the U.S. Constitution.

82. At all times relevant hereto, Defendant Sgt. Stewart and the other Defendant officers who assisted him were acting as officers of the Defendant City of Lancaster and the other governmental law enforcement agencies, and acting at all times within the course and scope of their employment.

83. Defendant Sgt. Stewart and other Defendant officers who assisted him, placed Plaintiff in fear of imminent, unpermitted, offensive bodily contact and did in fact subject Plaintiff to such bodily contact.

84. The acts of said Defendants as set forth in the proceeding paragraphs, constitute the unwarranted, cruel, inhumane, unjustifiable and excessive assault, all to Plaintiff's great detriment and loss.

85. The acts of said Defendants as set forth in the proceeding paragraphs deprived Plaintiff of his rights, privileges and immunities under the laws and the Constitution of the Commonwealth of Pennsylvania: in particular to be secure in his person and property, to be free from excessive punishment, to due process, and to equal protection of the laws, secured unto him by Article I, Sections 1, 8, 9, 13 and 26 of the Pennsylvania Constitution, all to his great detriment and loss.



**IV. RELIEF SOUGHT**

86. Plaintiff incorporates the facts averred in paragraphs 1 through 85 the same as if set forth at length herein.

87. Plaintiff Rowe seeks compensatory damages, against each and every named Defendant herein, jointly and severally, in an amount in excess of One Hundred Fifty Thousand (\$150,000.00) Dollars.

88. Plaintiff Rowe seeks punitive damages and treble damages against each and every named Defendant herein, jointly and severally, in an amount in excess of One Hundred Fifty Thousand (\$150,000.00) Dollars.

89. Plaintiff Rowe seeks attorney fees, interest and costs against each and every named Defendant herein, jointly and severally.

**WHEREFORE**, Plaintiff, Raymond Charles Rowe, respectfully prays that his demand for relief be granted against each of the Defendants, jointly and severally.

Respectfully submitted,

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PHILIP J. BERG, ESQUIRE  
Attorney for Plaintiff,  
Raymond Charles Rowe  
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